

Court Orders Ellsberg Trial

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LOS ANGELES, July 27—A federal appeals court ordered today that the Pentagon Papers trial must proceed as scheduled, despite the fact that a defense attorney or consultant was overheard during a government wiretap on someone else.

Denying a defense demand for full disclosure of details of the wiretap, a three-judge panel of the Ninth U.S. Circuit Court of Appeals said that U.S. District Court Judge W. Matt Byrne Jr. acted properly by inspecting the electronic surveillance log privately and declaring that it had no relationship to the trial of Daniel Ellsberg and Anthony Russo.

Immediately upon being informed of the ruling, Byrne reset opening arguments in the case for Monday morning.

Defense attorneys were huddling this evening, however, to decide whether to take their appeal to Supreme Court Justice William O. Douglas, who has final jurisdiction over the

ninth federal judicial circuit.

Douglas, who will be in nearby Pasadena at a judicial conference until Friday morning, participated in the original decision of other judges on the circuit court Wednesday morning to halt the Ellsberg-Russo trial until the wiretap issue could be resolved.

But 24 hours after an emergency hearing Wednesday afternoon on the defense appeal, the appellate court today vacated its postponement of the trial.

Circuit Judges Charles M. Merrill, M. Oliver Koelsch and Ozell M. Trask ruled that the defendants did not have standing to raise the wiretap issue before trial, unless it could be shown that the intercepted conversation directly intruded upon their relationship with their attorney or consultant.

"It is for the (trial) court in camera (privately) to determine whether such is the case," they said in a three-page opinion.

Only the prosecutors in the case and Byrne know the identity of the defense aide who was overheard in the government wiretap.

Byrne, and now the appellate court, have denied the defense contention that they must be told so that a determination can be made of whether the wiretap was legal, whether it taints the evidence in the case or affects the confidential attorney-client privilege.